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May 10, 2023

Shonda Green, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500

Re: D.T.C. 22-4 – Pole Attachment Complaint of CRC Communications LLC, d/b/a
OTELCO

Dear Secretary Green:

Enclosed for filing in the above-captioned proceeding is the Sur-Reply of Verizon MA in
Opposition to Motion for Enforcement of the Final Order.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alex Moore".

Alexander W. Moore

Enclosure

cc: Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

CRC Communications LLC, d/b/a Otelco)	
)	
v.)	D.T.C. 22-4
)	
Massachusetts Electric Company d/b/a)	
National Grid, and Verizon New England Inc.)	
)	

**SUR-REPLY OF VERIZON MA IN OPPOSITION TO MOTION
FOR ENFORCEMENT OF THE FINAL ORDER**

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) appreciates the opportunity to file this Sur-Reply in opposition to OTELCO’s Motion for Enforcement of the Final Order (the “Motion”). Verizon MA addresses below the two questions identified by the Hearing Officer for sur-replies.

1. If objecting to OTELCO’s new evidence being admitted in this proceeding, please explain why the evidence should not be admitted.

The so-called “O-Calc Reports” should not be admitted because they are not material to any issue adjudicated by the Department in this proceeding. The courts have long held that, in order to justify a request for a new trial under Mass. R. Civ. P. 59 or for relief from judgement under Rule 60 – situations analogous to OTELCO’s request here – “new evidence must be ‘material not only in the sense that it is relevant and admissible but also in the sense that it is important evidence of such a nature as to be likely to affect the result.’” *Wojcicki v. Caragher*, 447 Mass. 200, 215 (2006) *quoting De Luca v. Boston Elevated Ry.*, 312 Mass. 495, 497 (1942). In the Final Order, the Department laid out the standard to determine whether a specific pole is suitable for boxing, applied that standard to 14 poles that had been identified by OTELCO and

rejected OTELCO's general request to box any pole accessible by bucket truck. *See* Final Order at 13-23. The data in the O-Calc Reports is not even relevant to these issues, and it clearly is not "likely to affect the result[s]" reached by the Department in the Order.

To the contrary, OTELCO submitted the O-Calc Reports in support of its position on a different issue, not adjudicated in this case – namely, whether and to what extent supplemental surveys are appropriate to determine if the hundreds of poles OTELCO now seeks to box are suitable for boxing under the standard established in the Order. The Order does not prohibit supplemental surveys or discuss the sufficiency of the original surveys to assess boxing requests under the Order, *see* Verizon MA's Opposition to the Motion, at 6 and 8, and these issues are not addressed in the parties' pleadings, testimony or briefs.

OTELCO openly admits that the O-Calc Reports are not material to any issue addressed in the Order. In explaining why it did not obtain the O-Calc Reports and offer them in evidence when the record in this case was open, OTELCO states that the information in the Reports "was not put in issue until the Pole Owners claimed they did not have sufficient information to evaluate OTELCO's requests" which took place "well after issuance of the Final Order...." *See* OTELCO Motion for Leave to File Reply, ¶¶ 7 and 8. *See also*, Declaration of Debbie Brill-Poulin, ¶ 8, stating that, "This information only became clearly relevant in light of the Pole Owners' replies to OTELCO's Motion to Enforce...." The O-Calc Reports are material only to an issue that arose after the Order was issued, and they are not material to enforcing any provision in that Order. Accordingly, OTELCO's new information is not admissible in this proceeding.

2. If OTELCO's new evidence is admitted, please explain how this evidence should be evaluated by the Department regarding the pole owners' assertion that additional preconstruction surveys are needed before OTELCO's attachment applications can proceed.

Information in the O-Calc Reports may reduce the scope of the supplemental surveys that are needed to assess OTELCO's new request to box poles, but they do not eliminate the need for the surveys, for two reasons. First, the O-Calc Reports do not cover every pole that OTELCO wants to box. Verizon MA understands that Osmose generates an O-Calc Report only if a pole presents an engineering loading issue, and that there is no Report for many of the poles at issue here.

Second, while the O-Calc Reports – where they exist – appear to show if a pole has side-taps or is a corner pole and is therefore not suitable for boxing, they do not include information regarding other conditions which would preclude a pole from being boxed.¹ Many of the Reports do not show whether the subject pole is located on an embankment or how steep the embankment is. Many of the Reports do not include photographs or otherwise show whether the pole supports riser facilities, a cross-connect box or other equipment which may preclude boxing. Nor do the Reports show whether boxing one pole may result in code violations on neighboring poles or at the mid-spans between the poles. *See* Verizon MA Opposition at 10-11. Further, the Reports are presumably based on the original surveys and do not show any changes on the poles that may have occurred in the interim. *See id.* at 11-12. Consequently, and at a bare minimum, every pole that the O-Calc Reports do not disqualify from being boxed must be resurveyed to determine if they are suitable for boxing under the standard set in the Order.

¹ Contrary to the speculation in OTELCO's Reply, at 9, Verizon MA was not aware of the O-Calc Reports until OTELCO filed its Reply, and National Grid did not provide to Verizon MA data regarding side-taps or corner poles during the survey reconciliation process because, prior to issuance of the Order, that information was not needed to determine the make-ready work needed on the poles.

For these reasons and the reasons stated in Verizon MA's Opposition, the Department should deny the Motion.

Respectfully submitted,

VERIZON NEW ENGLAND INC., D/B/A VERIZON
MASSACHUSETTS

By its attorney,

A handwritten signature in black ink, appearing to read "Alex Moore", written in a cursive style.

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Dated: May 10, 2023